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Constitution of United States

Section 1, Article XIV 3

In the
Supreme Court of the United States

OCTOBER TERM, 1960

JOHN SING and FRIEDA SING,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioners, John Sing and Frieda Sing, natural born citizens of the United States, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida entered in the above entitled cause on the 1st day of March, 1961, and the order denying the re-hearing entered on the 22nd day of March, 1961.

OPINIONS BELOW

The Supreme Court of Florida did not render an opinion in its order in which the appeal taken from the District Court

of Appeal of Florida, First District, was dismissed, (Appendix 1-A), annexed hereto, nor was there an opinion in the order denying the Petition for Re-hearing, (Appendix 2-A).

The same is true with respect to the order entered by the District Court of Appeal, First District of Florida, (Appendix 3-A); and the Order denying Petition for Re-Hearing, (Appendix 4), in said District Court.

JURISDICTION

The Order of the District Court of Appeal of Florida, First District, was dated and entered on October 19, 1960, (Appendix 3-A). A Petition to reconsider order denying leave to apply to Circuit Court for Writ of Error Coram Nobis was filed October 31, 1960, (Appendix 5-A); an Order denying said Petition was entered and filed November 1, 1960, (Appendix 4-A). A Notice of Appeal was filed in the District Court, (Appendix 6-A), on November 14, 1960, to review in the Supreme Court of Florida the action taken in the District Court. The Supreme Court of Florida by its order dated and entered March 1, 1961, dismissed the appeal, (Appendix 1-A), and by its order dated and entered March 22, 1961, (Appendix 2-A), denied the Petition for rehearing.

This Petition is being filed within 90 days from March 22, 1961, and Petitioners contend the State of Florida denied to them their rights as provided and set forth in Section 1 of Article XIV of the United States Constitution.

QUESTION PRESENTED FOR REVIEW

Whether under the facts and circumstances of this case the Petitioners have been deprived of a fair trial guaranteed by

Section 1 of the Fourteenth Amendment of the United States Constitution, to-wit:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Petitioners, John Sing and Frieda Sing, were co-defendants with Richard J. Langston in the Circuit Court of St. Johns County, Florida.

The defendant, Richard J. Langston, was charged as a principal to the offense of an unlawful abortion in which Petitioners were charged as accessories. Langston was acquitted, Petitioners were convicted and upon appeal to the District Court these were affirmed, except as to the imposed indeterminate sentence from six months to a maximum of seven years, and upon reversal, as set forth in the case of *John Sing and Frieda Sing vs. State*, (*Fla.*, 115 *So. 2d* 73), *District Court of Appeal, First District*, it was directed said defendants be re-sentenced. Accordingly, on August 1, 1960, Presiding Judge P. B. Reyels sentenced each Petitioner to serve the maximum sentence of seven (7) years.

Petitioners believe and have set forth in their Petition styled Petition for Permission of District Court of Appeal, First Dis-

trict, to apply to Circuit Court of St. Johns County, Florida, for Writ of Error Coram Nobis, R.-1-27) that the said Presiding Judge P. B. Revels was on August 1, 1960, and long prior thereto, including the period during which they were tried, strongly prejudiced against them and to such an extent the did not receive a fair trial or sentence and that such prejudice and ill feeling was to Appellants unknown until August 1, 1960, and not made manifest until and subsequent to July 8, 1958.

The basis for said allegation of prejudice is due to the alleged prejudice of said Judge that existed toward Mr. Walter Arnold, formerly counsel for the Petitioners upon the above charge, on the part of Judge Revels.

The said Petition, (R-5-7), alleges the facts of prejudice toward Arnold are so interwoven with Petitioners' trial, alleged bribery and disbarment proceedings that no other conclusion can be reached but that prejudice existed on the part of Judge Revels toward the Petitioners since Arnold was their counsel at the time of the alleged bribery and supposedly was acting on their behalf.

In the case of *State of Florida ex rel Walter G. Arnald, Relator vs. P. B. Revels, as Circuit Judge*, 109 *So. 2d* 1, *February* 3, 1959, said Judge was prohibited from proceeding, and was directed to transfer the cause to Duval County for trial at which place it was upon Motion to Dismiss filed by the State disposed of by dismissal on the 23rd day of March, 1961, whereby Arnold was exonerated.

The material portions of said Petition are set forth in Appendix 9-A, and the undisputed facts pertaining to the activities of the judge, and others, are contained in the affidavit of Arnold, (R-11-27).

The first instance and manner in which the question posed above was raised occurred on November 22, 1960, by virtue of the filing of Assignments of Error, (Appendix 7-A), in the District Court. The District Court is an Appellate Court, however, but under the circumstances here is the Court of first instance. This Assignment of Error was filed in the Supreme Court of Florida on the 23rd day of December, 1960, and further reference to the question was made in the Petition for Re-hearing filed on March 14, 1961, (Appendix 8-A).

In each instance of a ruling in the District Court and Supreme Court no opinion was entered; the appeal was dismissed and Petitions for re-consideration and re-hearing denied without comment. Upon Motion to Stay the Supreme Court of Florida entered a stay order (Vol. II 1-3) staying execution of the sentence and judgments for 30 days.

The State of Florida avoided rendition of a decision on the Federal question.

REASONS FOR GRANTING WRIT

The Petitioners contend the State of Florida denied to them a fair trial and due process as guaranteed under Section 1 of Article XIV of the United States Constitution. They contend the trial judge was highly prejudiced against them and that if given a hearing the allegations of material prejudice can be shown and if shown a new trial should be granted and a trial held by an unprejudiced judge.

Petitioners urge the Court to note the State has not disputed the existence of prejudice and that in the case of *State ex rel Arnold v. Revels*, 113 So. 2d 218, it was judicially determined

it was not proper to allow judge Revels to preside in the trial of Mr. Arnold who was at the time of the alleged bribery counsel for Petitioners and who was certainly supposedly acting for them.

CONCLUSION

For the reasons stated the Petition for Certiorari should be granted and ultimately Petitioners permitted to apply for a Writ of Error Coram Nobis in order that an appropriate hearing may be held, and due inquiry made as to prejudice.

Respectfully submitted,

LARKIN, LEWIS & DECKER
Suite 1710 Lynch Building
Jacksonville, Florida

A. K. BLACK
P. O. Box 527
Lake City, Florida

Attorneys for Petitioners

SERVICE OF PETITION

of counsel for Petitioners, certify that a copy of the foregoing Petition for Writ of Certiorari was mailed this .... day of ....., 1961, air mail, postage prepaid, to the Solicitor General, Justice Department, Washington, D. C.

_____

Of Counsel

APPENDICES

Appendix 1-A

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1961

WEDNESDAY, MARCH 1, 1961

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

The Attorney General, on behalf of the appellee in the above cause, has filed a motion to dismiss the appeal in said cause, and upon consideration thereof, it is ordered that said motion be and the same is hereby granted, and the appeal which was entered in this cause in the District Court of Appeal of Florida, First District, November 15, 1960, be and the same is hereby dismissed.

A True Copy

TEST:

/s/ Guyte P. McCord
Clerk Supreme Court.

Appendix 2-A

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1961

WEDNESDAY, MARCH 22, 1961

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

On consideration of the Petition for Rehearing filed by Attorney for Appellants,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied.

A true copy.

TEST

/s/ Guyte P. McCord
Clerk Supreme Court

(THE ORDER OF MARCH 1, 1961, DISMISSING APPEAL IN THE ABOVE CAUSE HAS TODAY BEEN MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT)

Appendix 3-A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1960

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

Case No. C-190

Upon consideration of appellants' petition for permission of this Court to apply to the Circuit Court of St. Johns County for a Writ of Error Coram Nobis,

IT IS ORDERED that the petition be and the same is denied.

WITNESS the Honorable John T. Wigginton, Chief Judge, and Seal of the Court this 19th day of October, A. D. 1960.

/s/ Clinton Ashmore
Clerk

A True Copy

ATTEST:

/s/ Clinton Ashmore
Clerk First District Court of Appeal
Tallahassee, Florida

Appendix 4-A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1960

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

Case No. C-190

ORDER.

Upon consideration of appellants' petition to reconsider this court's order of October 19, 1960, denying appellants' petition for application to apply to the Circuit Court of St. Johns County for Writ of Error Coram Nobis,

IT IS ORDERED that the petition to reconsider is denied.

WITNESS the Honorable John T. Wigginton, Chief Judge and Seal of the Court this 1st day of November, A. D. 1960.

Clinton Ashmore
Clerk

A True Copy

ATTEST:

/s/ Clinton Ashmore
Clerk First District Court of Appeal
Tallahassee, Florida

Appendix 5-A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1960

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

Case No. C-190

PETITION FOR RECONSIDERATION OF APPELLANTS' PETITION FOR PERMISSION TO APPLY TO THE CIRCUIT COURT OF ST. JOHNS COUNTY FOR WRIT OF ERROR CORAM NOBIS AND REQUEST FOR ORAL ARGUMENT

Come now the appellants, John and Frieda Sing, through their undersigned attorney, and respectfully move this Honorable Court to reconsider its Order entered on the 19th day of October, A.D. 1960, in the above entitled cause wherein this Honorable Court denied appellants' Petition for Permission to Apply to the Circuit Court of St. Johns County for Writ of Error Coram Nobis, and would show as reason therefor unto

this Honorable Court as follows:

1. The said order of this Honorable Court denying said Petition did not state or reveal whether said denial was made on the merits of the appelants' cause as shown by their petition or whether it was denied because this Honorable Court lacks jurisdiction in this matter.

2. That the Honorable Chief Justice John T. Wigginton was not present when appellants' attorney delivered the Petition to this Honorable Court and at that time and place there was considerable question about the procedure under which said Petition would be processed, and further there was a serious question with regard to whether jurisdiction to consider said request lay with the District Court of Appeal or the Circuit Court in and for St. Johns County.

3. It is appellants' position that it is essential to a proper presentation of said Petition for Writ of Error Coram Nobis, in order to bring out all of the facts which in this particular case are very complicated, that the Court hear oral argument before making a final determination.

WHEREFORE, it is respectfully requested that this Honorable Court will reconsider and hear further the above entitled Petition for Writ of Error Coram Nobis and will allow oral argument at a time to be determined by this Honorable Court prior to making a final determination upon said request.

LARKIN, LEWIS & DECKER
By Thomas A. Larkin
1710 Lynch Building
Jacksonville 2, Florida

Attorneys for Appellants

I HEREBY CERTIFY that a copy hereof has been furnished to Honorable Otis Henderson, Attorney General's Office, Tallahassee, Florida, by mail, this 29th day of October, A. D. 1960.

/s/ Thomas A. Larkin
Attorney

Appendix 6-A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee

Filed Nov. 15, 1960 Clinton Ashmore, Clerk District Court of Appeal First District.

NOTICE OF APPEAL

Comes now the Appellants, John Sing and Frieda Sing, by their undersigned Counsel, and take and enter this their appeal to the Supreme Court of Florida to review that certain judgment, decree or order denying Appellants' petition for permission to apply to Circuit Court of St. Johns County for a Writ of Error Coram Nobis entered herein by said District Court on October 19, 1960, recorded in Minute Book 1, page 319 and that certain judgment, decree or order denying appellants' petition to reconsider the foregoing order entered herein by said District Court on November 1, 1960, recorded in Minute Book 1, page 398.

This the 14th day of November, 1960.

Larkin, Lewis & Decker
1710 Lynch Building
Jacksonville, Florida

M. H. Myerson
Professional Building
Jacksonville, Florida

A. K. Black
Lake City, Florida

By: /s/ A. K. Black
Of Counsel

I hereby certify a copy of the above Notice of Appeal was furnished to Honorable Richard W. Ervin, Attorney General, Tallahassee, Florida on this the 14th day of November, 1960.

/s/ A. K. Black
Of Counsel

Appendix 7-A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

ASSIGNMENTS OF ERROR IN SUPPORT OF APPEAL

The Appellants, John Sing and Frieda Sing, by their undersigned Counsel, assigns the following errors to be asserted and relied upon in their appeal heretofore entered in this cause on the 14th day of November 1960, to the Supreme Court of Florida.

1. The District Court of Appeal erred in its order filed in this cause on October 19, 1960, as recorded in Minute Book 1, page 395, said order having denied permission to Appellants for leave to apply to Circuit Court for Writ of Error Coram Nobis and thereby denied to Appellants due process of law as guaranteed by Section 1 of the Fourteenth Amendment of the U. S. Constitution and Section 12 of Declaration of Rights of the Florida Constitution.

2. The District Court of Appeal erred in its order filed in

this cause on November 1, 1960, recorded in Minute Book 1, page 398, by which said Court declined to reconsider its ruling in which leave to apply to Circuit Court for Writ of Error Coram Nobis was denied for the reasons set out in the foregoing Assignment of Error and because it failed to observe and require the fundamental fairness essential to the very concept of justice.

This November 22, 1960.

Larkin, Lewis & Decker
1710 Lynch Building
Jacksonville, Florida

M. H. Myerson
Professional Building
Jacksonville, Florida

A. K. Black
Lake City, Florida

Attorneys for Appellants

By: /s/ A. K. Black

CERTIFICATE

I hereby certify a copy of the above and foregoing Assignments of Errors was furnished to Honorable Richard W. Ervin, Attorney General, Tallahassee, Florida on this 22nd day of November, 1960.

By: /s/ A. K. Black

Appendix 8-A

IN THE SUPREME COURT OF FLORIDA

JOHN SING and FRIEDA SING,

Appellants,

vs.

STATE OF FLORIDA,

Appellee.

PETITION FOR RE-HEARING

Come now John Sing and Frieda Sing, Appellants, by their undersigned attorneys, and respectfully petition this Court for a re-hearing and reconsideration of that certain order bearing date of March 1, 1961, wherein the appeal was dismissed and for grounds therefor say:

1. The Court overlooked and failed to consider that the State has not at any time denied that prejudice existed in the mind of the trial court at the time of trial and imposition of sentence and that by reason thereof Appellants were denied a fair trial, due process and equal protection of the laws.

2. That in no instance has the District Court, First District, or The Supreme Court, entered any order other than a recital the cause was dismissed or the relief sought was denied.

This the 13th day of March, 1961.

LARKIN, LEWIS & DECKER
1710 Lynch Building
Jacksonville, Florida

M. H. MYERSON
Professional Building
Jacksonville, Florida

A. K. BLACK
Lake City, Florida

By: /s/ A. K. BLACK
Of Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Re-hearing has been furnished to Honorable Richard W. Ervin, Attorney General, Tallahassee, Florida, by mail, this March 13, 1961.

/s/ A. K. Black
Of Counsel for Appellants

Appendix 9-A

MATERIAL PORTIONS OF THE PETITION FOR PERMISSION OF DISTRICT COURT OF APPEAL, FIRST DISTRICT, TO APPLY TO CIRCUIT COURT OF ST. JOHNS COUNTY, FLORIDA, FOR WRIT OF ERROR CORAM NOBIS, FILED OCTOBER 13, 1960, WHICH THE PETITIONERS DESIRE THIS COURT TO READ:

Come now the Petitioners, hereinafter also referred to as defendants, John Sing and Frieda Sing, by their undersigned attorneys, and bring this their Petition for Permission of District Court of Appeal, First District, to apply to Circuit Court of St. Johns County, Florida for Writ of Error Coram Nobis, and as reason therefor show unto the Court as follows:

1. That since the defendants, John Sing and Frieda Sing, were convicted in this cause over two years and ten months ago there has come to light new developments which had they been known prior to the date of defendants' trial, would have prevented the entry of a judgment of guilty against the defendants and that in the light of said new developments the defendants are entitled to, and should be granted a new trial.

2. Defendants would show unto the Court that they were originally represented in the above entitled cause by Walter G. Arnold, a Jacksonville, Florida attorney. That on November 30, 1956, while this cause was pending and before trial, the said Walter G. Arnold was charged, along with one John Womack, a Jacksonville Bail bondsman, with attempting to bribe the State's Attorney, William W. Judge, in this cause in the Court below and other cases which were then pending

against the defendants in the Circuit Court of St. Johns County, Florida. Because of the said bribery charge having been brought against him, Walter G. Arnold on February 5, 1957, withdrew as attorney of record for the defendants.

9. On the 17th day of October, 1957, the Honorable P. B. Revels imposed sentence on both defendants of six months to seven years imprisonment.

10. . . . Defendants would further point out that many of the grounds which were alleged by the said Walter G. Arnold in support of his Suggestion for Disqualification and Writ of Prohibition contained facts which occurred prior to the trial of this cause which heretofore had been unknown to the defendants and unavailable to them at the time they filed their Suggestion for Disqualification, and further could not have been ascertained by reasonable diligence before the trial of this cause . . .

11. On May 14, 1959 the District Court of Appeal, First District of Florida, having considered the record presented to it in connection with Walter G. Arnold's Suggestion for Writ of Prohibition which record contained among other things, the affidavit of the said Walter G. Arnold heretofore referred to, did render its opinion making the rule in prohibition absolute and denying the State of Florida's petition for Modification and Clarification. In its decision the District Court of Appeals, First District of Florida, set forth the following language:

> ". . . Nevertheless, the respondent has admitted in his return many things alleged in the suggestion that raise a question as to his impartiality toward the relator. At the least the respondent has not avoided the appear-

ance of prejudice. He did not even deny in his return that he is prejudiced.

"Under these circumstances we are of the opinion that the Rule in Prohibition should be made absolute." (Fla. 113 So. 2d 218)

12. Thereafter the said Walter G. Arnold's case on the charge of bribery was tried in Volusia County commencing on the 13th day of June, 1960, before the Honorable Thomas Tappy, Circuit Judge in and for the Seventh Judicial Circuit of Florida, which trial culminated on June 20, 1956, when the Honorable Thomas Tappy directed a verdict of acquittal for the said Walter G. Arnold.

13. . . . The defendants, therefore, allege that had they received a fair and impartial trial before a fair and impartial judge who was not prejudiced and biased against them, as hereinabove set forth as shown by the facts in this case, they, too, would have been found not guilty and a judgment of acquittal would have been entered in their favor.

14. Defendants further contend that each of the acts of prejudice alleged by their former attorney Walter G. Arnold in support of his Suggestion for Disqualification and Motion for Writ of Prohibition would be equally applicable to the defendants since they were the ones who supposedly advanced the money for the alleged bribery attempt and in whose behalf the alleged bribery attempt was supposedly made. Therefore it follows logically that the same prejudice against defendants' former attorney would be held by the Honorable P. B. Revels against the defendants.

16. In further support of defendants' position, that their

Suggestion for Disqualification of the said Honorable P. B. Revels as Judge heretofore filed in this cause should have been granted the defendants cite the fact that on an indeterminate sentence of six months to seven years and upon reversal by the District Court of Appeals, First District (Fla. 115 So 2d 773) the case was remanded to the said Judge P. B. Revels for appropriate sentence and the said Judge did thereupon, on August 1, 1960, impose upon the defendants the maximum sentence of seven years being much more severe than the original sentence, and being the maximum allowable under the law, notwithstanding the fact that said defendants during the intervening two years and ten months had led exemplary lives and further notwithstanding that the State's Attorney stated that he had no objection to the defendants being placed on probation, particularly in view of the fact that the principal, Richard J. Langston, had been acquitted.